Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-556

FRANCIS M. COCKE, Petitioner,

v.

JAMES STEWART COMPANY, et al, Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ARIZONA DIVISION I, DEPARTMENT B

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JOAN H. COCKE

November 6, 1975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-556

FRANCIS M. COCKE, Petitioner,

v.

JAMES STEWART COMPANY, an Arizona corporation, and M. SETH HORNE and MAURINE D. HORNE, his wife; JOAN H. COCKE, a divorced woman; TRANS-AMERICA TITLE INSURANCE COMPANY OF ARIZONA, an Arizona corporation; TITLE INSURANCE COMPANY OF MINNE-SOTA, a Minnesota corporation, Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ARIZONA DIVISION I, DEPARTMENT B

The Respondent, JOAN H. COCKE, respectfully represents that the Writ of Certiorari should not be granted to review the judgment of the Court of Appeals of the State of Arizona, Division I, Department B, entered in CA-CIV-2970 (Maricopa County Superior Court No. C-222472) on February 24, 1975.

The Petitioner, FRANCIS M. COCKE, and this Respondent, JOAN H. COCKE, his former wife, on October 9, 1968 entered into an agreement to sell certain real property to JAMES STEWART COMPANY, an Arizona corporation, or its nominee. The portion of the property agreed to be sold by JOAN H. COCKE had previously been in trust.

When the sale was not consummated, an action for specific performance was commenced by the buyers, JAMES STEWART COMPANY and M. SETH HORNE and MAURINE D. HORNE, his wife, against the Petitioner, FRANCIS M. COCKE, and JOAN H. COCKE (A.173).

The Petitioner, FRANCIS M. COCKE, answered the Complaint and filed a Counterclaim against the Plaintiffs and TRANSAMERICA TITLE INSURANCE COMPANY OF ARIZONA and a Cross-Claim against this Respondent, JOAN H. COCKE (A.179).

As stated by Petitioner, the trial court ordered the Petitioner to amend his pleadings so as to separately state his claim against each of the other

parties. Petitioner failed to amend his Cross-Claim against the Respondent, JOAN H. COCKE, and as stated by Petitioner, judgment was entered in her favor and against the Petitioner (P.10).

The judgment was based upon a motion for judgment in favor of the Cross-Defendant against the Cross-Claimant, FRANCIS M. COCKE. This judgment was entered November 10, 1970 (A.106). Contrary to the Petitioner's contention, this judgment could not and did not alter any agreement. No appeal was taken from this judgment. However, at this late date in the Notice of Appeal (A.497) from the trial court's order of September 30, 1974 approving account of court appointed officer and ordering distribution of funds (A.165), Petitioner attempts to revive all previous judgments and orders involved in this matter.

The order of the Court of Appeals of the State of Arizona, Division I, Department B, which Petitioner would have this court review, states that there are seven such orders and judgments which have since become final (A.543). The judgment in favor of this Respondent is set forth as Item 5 of the Notice of Appeal (A.498). With respect to these seven final orders or judgments the Court of Appeals found:

"All of these orders and judgments are already final, res judicata, and not subject to the subsequent, collateral attack appellant is attempting here. The attempted appeal from items two through seven therefore confers no jurisdiction on this Court, as all of such matters are patently non-appealable, and knowledge thereof must be imputed to both appellant and his counsel. The Court therefore regards the purported appeal therefrom as taken solely for delay and frivolous and an abuse of the appellate process." (A.544).

The appeal was dismissed as to Items 2 through 6 for lack of jurisdiction and the entire appeal was dismissed as frivolous (A.545-546).

Petitioner's allegations that he has in some manner been deprived of any right, privilege or immunity secured or protected by the Constitution and laws of the United States because of all the proceedings had in this matter in the State Courts are abstractions. His contentions are absurd.

Petitioner calls this Court's attention to the fact that he has filed a previous Petition for Writ of Certiorari in this Court (Docket No. 74-1532) arising out of this same litigation (P.26). This Petition was denied October 6, 1975 and the present Petition was dated October 9, 1975.

This Petition should also be denied as there are no reasons for granting the Writ under Rule 19(1)(b), Rules of the United States Supreme Court.

Respondent respectfully submits that this Petition for Writ of Certiorari is frivolous and is without merit and should be denied.

Respectfully submitted,

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Attorney for Respondent
JOAN H. COCKE

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 1975, three (3) copies of the Opposition to Petition for Writ of Certiorari to the Court of Appeals of the State of Arizona, Division I, Department B, were served on each party separately represented, by depositing the same in the United States Post Office at Phoenix, Arizona, first class postage prepaid, addressed to counsel of record at their respective post office addresses as hereinafter set forth. I further certify that all parties required to be served have been served.

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